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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/578,089

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Baudry Jacquet

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EXAMINER

DAVIS, DEBORAH A

ART UNIT

PAPER NUMBER

1655

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/578,089	Applicant(s) JACQUET, BAUDRY	
	Examiner DEBORAH A. DAVIS	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9 and 11-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9 and 11-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12-30-08</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicants' response to the Office Action mailed on September 2, 2008 has been acknowledged. Currently, claims 9, and 11-25 are pending and under consideration for examination.

Information Disclosure Statement

The information disclosure statement filed 12-30-08 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because there is no English translation or relevance statement of the foreign document listed. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, and 11-25 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Winston et al (WO 02/100329) in view of Shyam K. Gupta (US 2004/0105894) for reasons of record and restated below:

A method for treating conditions and/or imbalances of the skin, skin appendages and/or overweight conditions in a human body comprising the oral administration of a combination product comprising a first composition (a) containing a green tea extract, vitamin C, and optionally at least one metallic compound selected from zinc, chromium and a mixture thereof, and a second composition (b) containing at least one metallic compound selected from iron, copper, zinc, chromium and a mixture thereof, on the condition that zinc and iron are not simultaneously present in the same composition, wherein compositions (a) and (b) being separately or consecutively administered to said human body.

The reference of Winston et al beneficially teaches a dietary nutritional supplement which comprise of a two-part composition, a lipid-soluble portion in a soft gel cap form and a water-soluble portion in a hard shell capsule or tablet form (page 11, lines 10-31, e.g.). The hard shell capsule/tablet comprise of Vitamin C (200mg) and Green Tea Extract (100mg) as active ingredients, which the examiner interprets as

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composition (a). The soft gel capsule comprise of mixed tocopherols that can be replaced by or be in combination with zinc (page 14, lines 9-11, page 15, Example 1 and Example 2, e.g.). The examiner interprets the soft gel capsule as the second composition (b). The presence of zinc and iron are not in the same composition and the compositions (a) and (b) can be taken consecutively or separately administered at different times of the day or spread out throughout the day (page 11, lines 20-31, e.g.). The zinc and tocopherols can be mixed together in a soft gel capsule of composition (b), therefore it appears to be complexed. The cited reference discloses that compositions (a) and (b) are designed to help the body resist the effects of the aging process (abstract, page 3, lines 4-12, e.g.). Therefore, the cited compositions would treat conditions of the skin, as claimed.

The method of Winston et al. does not include the teaching of iron or copper as ingredients in compositions (a) or (b).

The reference of Gupta beneficially teaches that trace metals such as iron, copper and zinc are necessary for the proper functioning of superoxide dismutase (SOD) and other deactivators of active-oxygen molecules which cause aging of skin and other skin disorders (paragraph 0028-0029 and abstract, e.g.).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further include any one or combination of trace metals such as iron or zinc, and/or copper taught by Gupta, into the composition taught by Winston based on the beneficial teaching that they are necessary for the proper functioning of superoxide dismutase, which is associated with aging of skin. The adjustment of

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particular conventional working conditions (e.g. suitable dosages and weight percentages of the instant ingredients) is deemed merely a matter of judicious selection and routine optimization, which is well within the purview of the skilled artisan.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of the evidence to the contrary.

Response to Arguments

Applicant's arguments filed 12-30-08 have been fully considered but they are not persuasive.

Applicant argues that it would have not been obvious to one skilled in the art to combine Winston and Gupta's formulas because Gupta's formula is for topical use whereas Winston's formula and that of the Applicant's claims are orally administered. Applicant argues that one skilled in the art would not look to a topical formula to modify an orally administered formula because compositions within the topical solution do not necessarily function in an orally administered formula as they do in a topical formula. Applicant further argues that Winston discloses administering both compounds simultaneously. Applicant argues that Vitamin C should not be administered simultaneously with iron and copper because their oxidant and antioxidant effects may cancel each other (applicant directs the examiner's attention to the specification, pg 4,

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lines 11-20). Applicant argues that claim 9 has been amended to recite that the compositions are being administered consecutively and separately. These arguments have been fully considered but not found to be persuasive of error.

In response, the examiner is not relying on the teaching of Gupta for the administration of oral compositions but relied on the reference of Winston for that teaching. The examiner only relied on Gupta for its teaching of trace metals such as iron, copper and zinc are necessary for the proper functioning of superoxide and other deactivators of oxygen molecules which causes aging of the skin and other skin disorders. Therefore one of ordinary skill in the art would have gleaned from the teaching of Gupta and would want to further include trace minerals in the composition of Winston based on its benefits to the aging process of the skin. The reference of Winston discloses the administration of compositions (a) and (b) can be taken in any combination at any time during the day. The compositions can be taken together or spread out during the day (which meets the limitation of consecutively and separately).

With respect to applicant's argument that Vitamin C should not be administered simultaneously with iron and copper because their oxidant and antioxidant effects may cancel each other is not a limitation found in the claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues that the combination of art does not meet every limitation of claim 9 and 26. Applicant argues that the soft gel composition of Winston contains zinc. Applicant argues that the hard shell capsule taught by Winston does not contain zinc or

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chromium as recited by the claims. Applicant further argues that Winston discloses zinc in the lipid capsule; and if one of skilled in the art included iron in Winston's formula, he or she would include it in the lipid capsule with zinc. Applicant argues that the combination would not meet the above limitation of claim 9 which requires that zinc and iron are not simultaneously present in the same composition. These arguments have been fully considered but not found to be persuasive of error.

Applicant assertion that one of ordinary skill in the art would include the iron taught by Gupta in the soft capsule of Winston versus the hard capsule is not supported.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

No claims are allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEBORAH A. DAVIS whose telephone number is (571)272-0818. The examiner can normally be reached on 8-5 Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Deborah A. Davis
Patent Examiner, AU 1655
March 2009

/Christopher R. Tate/
Primary Examiner, Art Unit 1655